

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

FRANK ROBERTS

Plaintiff

§ § § § § § § § § §

VS.

CA No. _____

SUBURBAN PROPANE, L.P..

Defendant

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DEFENDANT SUBURBAN PROPANE, L.P.'S NOTICE OF REMOVAL

Defendant Suburban Propane, L.P. (“**Suburban Propane**”) files this Notice of Removal from the County Court at Law, Nacogdoches County, Texas, to the United States District Court for the Eastern District of Texas, Lufkin Division, pursuant to 28 U.S.C. § 1441(a) (“Removal of Civil Actions”); 28 U.S.C. § 1331 (“Federal Question”); and 28 U.S.C. § 1446 (“Procedure for Removal of Civil Actions”). In support thereof, Suburban Propane would show as follows:

1. Suburban Propane has been named as a defendant in an action styled Cause No. CV1613669, *Frank Roberts v. Suburban Propane, L.P.*, In the County Court at Law, Nacogdoches County, Texas (“**the State Court Action**”).

2. Plaintiff Roberts commenced the State Court Action against Defendant Suburban Propane on or about January 29, 2016, with the filing of Plaintiff's Original Petition. Suburban Propane was served with a copy of Plaintiff's Original Petition via certified mail on February 9, 2016.

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3. No jury demand has been made in the state court action.

4. Plaintiff alleges he was employed by Defendant, that he was required to work extra hours that he was not paid for, that he is due “on call” pay, and that Defendant terminated his employment soon after he complained about not being paid correctly. *Plaintiff’s Original Petition* at pp. 1-2. Plaintiff alleges that Defendant’s actions violate 29 U.S.C. § 215(a)(a) [sic] (“Prohibited Acts; Prima Facie Evidence”) of the Fair Labor Standards Act.¹

5. Suburban Propane filed its Answer to Plaintiff’s Original Petition with the County Clerk of Nacogdoches County on February 29, 2016. Further proceedings have not been had against Defendant in the State Court Action.

Grounds for Removal
Federal Question – Fair Labor Standards Act

6. “The [federal] district courts have original jurisdiction of all civil actions arising under the Constitutions, laws, or treaties of the United States.” Unless expressly prohibited by an Act of Congress, a defendant may remove any civil action of which the federal district courts have original jurisdiction from state court to federal court. 28 U.S.C. § 1441(a).

7. Plaintiff sole cause of action is an alleged violation of the Fair Labor Standards Act. The FLSA states that such an action “may be maintained in any Federal or State court of competent jurisdiction” 29 U.S.C. § 216(b). Because there is no express prohibition on removal of a cause of action under the FLSA, removal is proper. *Breuer v.*

¹ Plaintiff alleges that “[t]he acts of defendant in terminating Plaintiff after he complained of not being paid correctly” were in violation of the FLSA. He is apparently alleging a violation of Section 215(a)(3).

Jim's Concrete of Brevard, Inc., 538 U.S. 691 (2003) (holding that the language “may be maintained in State court” is not an express prohibition on removal).

Procedural Requirements for Removal

8. Venue is proper in this federal judicial district because the State Court Action is pending within the Lufkin Division of the United States District Court for the Eastern District of Texas. 28 U.S.C. § 124(c)(6).

9. Suburban Propane’s notice of removal is procedurally correct. Removal is timely because Suburban Propane has filed this notice of removal with the Court within thirty days after receipt by Suburban Propane of Plaintiff’s Original Petition in the State Court Action. 28 U.S.C § 1446(b).

10. As required by 28 U.S.C. § 1446(a) and Eastern District Local Rule CV-81(c), Suburban Propane files with this Notice of Removal –

Ex. 1 Plaintiff’s Original Petition, with service of process and citation

Ex. 2 A certified copy of the state court docket sheet

Ex. 3 Defendant’s Answer to Plaintiff’s Original Petition

Ex. 4 A list of all parties in the case, all attorneys involved in the action being removed, and the name and address of the court from which the case is removed.

11. The removed case is pending. E.D. L.R. CV-81(c)(1).

12. Neither party requested a trial by jury in the State Court Action. E.D. L.R. CV-81(c)(4).

Prayer

Suburban Propane respectfully prays that the state court action be removed from the Nacogdoches County Court to this Court, the United States District Court for the Eastern District of Texas, Lufkin Division.

Respectfully submitted,

OGDEN BROOCKS & HALL, LLP

By: /s/ Karan C. Ciotti

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**ATTORNEYS FOR DEFENDANT
SUBURBAN PROPANE, L.P.**

CERTIFICATE OF SERVICE

I, Karan C. Ciotti, hereby certify that on this 8th day of March, 2016, I electronically filed the Defendant Suburban Propane, L.P.'s Notice of Removal with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties who have appeared and registered with CM/ECF:

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ATTORNEY FOR PLAINTIFF
FRANK ROBERTS

/s/ Karan C. Ciotti
Karan C. Ciotti